

**IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION
1:17 CR 39**

UNITED STATES OF AMERICA,

v.

FERNANDO NIETO.

)
)
)
)
)
)

ORDER

The Court must now reevaluate the terms and conditions of pretrial release after the close of a Rule 11 proceeding that was held October 27, 2017. Defendant was present with his attorney Mary Ellen Coleman, and the Government was present and represented through Assistant United States Attorney Richard Edwards. From the Defendant's arguments, the Government's arguments, and the records in this cause, the Court makes the following findings:

Findings. On April 4, 2017, a bill of indictment was issued charging Defendant with possession with intent to distribute methamphetamine in violation of Title 21 U.S.C. § 841(a)(1). On October 27, 2017, the Court held an inquiry, pursuant to Federal Rule of Criminal Procedure 11, and accepted a plea of guilty by Defendant to that charge. At the end of the Rule 11 proceeding, the Court was presented the issue of whether or not Defendant should now be detained, pursuant to Title 18 U.S.C. § 3143(a)(2).

Discussion. 18 U.S.C. § 3142(a)(2) provides as follows:

(2) The judicial officer shall order that a person who has been found guilty of an offense in a case described in subparagraph (A), (B), or (C) of subsection (f)(1) of section 3142 and is awaiting imposition or execution of sentence be detained unless—

(A)(i) the judicial officer finds there is a substantial likelihood that a motion for acquittal or new trial will be granted; or

(ii) an attorney for the Government has recommended that no sentence of imprisonment be imposed on the person; and

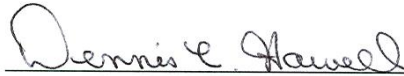
(B) the judicial officer finds by clear and convincing evidence that the person is not likely to flee or pose a danger to any other person or the community.

From an examination of the records, it appears that Defendant entered a plea of guilty on October 27, 2017, to possession with intent to distribute methamphetamine in violation of 21 U.S.C § 841(a)(1). That crime is one of the crimes that is referenced under 18 U.S.C. § 3142(f)(1)(C). The Court asked AUSA Richard Edwards whether or not there is going to be a recommendation that no sentence of imprisonment be imposed on Defendant. Mr. Edwards advised the Court that such a recommendation could not be made in this matter. As a result of the plea of guilty, the Court cannot find there is a substantial likelihood that a motion for acquittal or new trial will be granted or that an attorney for the Government has recommended that no sentence of imprisonment be imposed upon Defendant. Thus, it would appear, and the Court is of the opinion, that the Court should apply the

factors as set forth under 18 U.S.C. § 3143(a)(2) which require the detention of Defendant.

Therefore, the terms and conditions of pretrial release in this matter are hereby **REVOKED** and it is **ORDERED** that Defendant be detained pending further proceedings in this matter.

Signed: October 30, 2017

A handwritten signature in cursive script, reading "Dennis L. Howell", written over a horizontal line.

Dennis L. Howell
United States Magistrate Judge

